Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

THE STATE OF OKLAHOMA, ex rel., Moshe Tal, and Taxpayers Against Ripoffs ("T.A.R."), an association of more than ten resident taxpayers of the City of Oklahoma City, Oklahoma,

Petitioners,

v.

THE CITY OF OKLAHOMA CITY, OKLAHOMA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court of Oklahoma

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

I. RULE 14 1(h)(i)(i): Opinion and order entered in conjunction with the judgment sought to be reviewed:

1. Oklahoma Supreme Court Opinion - *The State of Oklahoma, ex rel. Tal v. The City of Oklahoma City, et al.*, 2000 OK 70, 19 P.3d 268. Decided Sept. 26, 2000. Rehearing Denied Feb. 5, 2001.

2000 OK 70 **(Cite as: 19 P. 3d 268)**

SUPREME COURT OF OKLAHOMA.

The STATE of Oklahoma, ex rel., Moshe TAL, resident taxpayer of The City of Oklahoma City; and Taxpayers Against Ripoffs ("T.A.R."), an association of more than ten resident taxpayers of the City of Oklahoma City, Oklahoma,

Plaintiffs-Appellants,

v.

The CITY OF OKLAHOMA CITY, Oklahoma, a municipal corporation; Ronald J. Norick, in his personal and official capacity as the former Mayor of the City; Kirk D. Humphreys, in his personal and official capacity as the Mayor of the City; James E. Thompson, in his personal and official capacity as Assistant City Manager & former MAPS Director; William O. West, in his personal and official capacity as City's' Assistant Municipal Counselor; Daniel T. Brummitt, in his personal and official capacity as City's Assistant Municipal Counselor; The Oklahoma City Urban Renewal Authority, a public body corporate; Tiana P. Douglas, in her personal and official capacity as the Executive Director of Urban Renewal; Stanton L. Young, Fred Jones Hall, J. Larry Nichols, Warren Gardener, and James R. Tolbert III, in his personal and official capacities as Commissioners of Urban Renewal; William (Bill) O. Johnstone, in his personal and official capacity as the former

Commissioner of Urban Renewal; Dan Batchelor, in his personal and official capacity as legal counselor of Urban Renewal; Bricktown Parking Investors, L.L.C., an Oklahoma limited liability company; Bricktown-Tmk/Hogan Parking, L.L.C., an Oklahoma limited liability company; Okc Athletic Club Limited Partnership; Bap- Bricktown, L.L.C., an Oklahoma limited liability company; Tmk/Hogan Entertainment, L.L.C., an Oklahoma limited liability company; Torchmark Corporation (TMK), an Alabama corporation; Torchmark Development Corporation, and TMK Income Properties, both subsidiaries of TMK; Dan Randolph (Randy) Hogan; Edwards Theatres Circuit, Inc., a California corporation; Oklahoma Gas & Electric Company (OG & E), an Oklahoma Corporation; The Benham Group, an Oklahoma corporation; and John Does 1-50; Defendants- Appellees.

No. 94,874.

Sept. 26, 2000.

Rehearing Denied Feb. 5, 2001.

Taxpayers and taxpayers' organization brought qui tam action against city, challenging city's development project. The District Court, Oklahoma County, Niles Jackson, J., dismissed action, and appeal was taken. The Supreme Court held that determination in city's prior declaratory judgment action that plaintiffs did not have standing to intervene because they failed to show that city was not adequately representing their interests precluded subsequent qui tam action regarding the same project.

Affirmed.

Watt, J., filed opinion concurring in part and dissenting in part.

West Headnotes

[1] **Judgment** 713(1)

228k713(1) Most Cited Cases

Determination in city's prior declaratory judgment action regarding legality of city's development project, that taxpayer and taxpayers' organization did not have standing to intervene because they failed to show that city was not adequately representing their interests, precluded taxpayer and organization from bringing subsequent qui tam action regarding the same project. 62 Okl.St.Ann. §§ 372, 373.

[2] **Appeal and Error** 361(2)

30k361(2) Most Cited Cases

Failure of taxpayer and taxpayers' organization to divulge in their petition in error relationship between their qui tam action and city's prior declaratory judgment action regarding the same development project, on appeal from order dismissing qui tam action, violated requirement that petitions in error state related prior appeals.

[3] **Judgment** 713(1)

228k713(1) Most Cited Cases

Determination in city's prior declaratory judgment action that taxpayer and taxpayers' organization lacked standing to pursue qui tam action arising from city's development project barred taxpayer and organization from pursuing any qui tam action regarding the project, regardless of the defendant's identity. 62 Okl.St.Ann. §§ 372, 373.

***269** Appeal from the District Court of Oklahoma County, Oklahoma; Honorable Niles Jackson District Judge.

§ 0 The trial court dismissed the petition of Appellants Moshe Tal, et al., who denominate themselves as "an association known as Taxpayers Against Ripoffs ('T.A.R.')" and who sued on relation of the State of Oklahoma in a *qui tam* action. We hold that the trial court correctly dismissed Appellants' petition.

TRIAL COURT'S ORDER OF DISMISSAL AFFIRMED.

Mary Gaye LeBoeuf, Oklahoma City, Oklahoma, for Plaintiffs-Appellants.

Melvin R. McVay, Jr., Robert N. Sheets, Heather L. Hintz, Ellen K. Spiropolous, Phillips, McFall McCaffrey, McVay & Murrah, Oklahoma City, Oklahoma, for Defendants-Appellees, Bricktown TMK/Hogan Entertainment, L.L.C., Bricktown Parking Investors, L.L.C., OKC Athletic Club, TMK/Hogan, Hogan Properties, and Dan Randolph Hogan.

John T. Edwards, Monnet, Hayes, Bullis, Thompson & Edwards, Oklahoma City, Oklahoma, for Defendant-Appellee, Torchmark Corporation.

Patrick M. Ryan, Phillip G. Whaley, Ryan & Whaley, Oklahoma City, Okl. for Defendant-Appellee, Edwards Theatres Circuit, Inc.

James F. Davis, Kieran D. Maye, Jr, Sheila D. Tims, L. Elizabeth Brown, Andrews, Davis, Legg, Bixler, Milsten, & Price, Oklahoma City, Oklahoma for Defendants-Appellees, The City of Oklahoma City, Oklahoma, *270 Ronald J. Norick, Kirk D. Humphreys, James E. Thompson, William O. West, and Daniel T. Brummitt.

James Dan Batchelor and Janis S. Powers, Batchelor & Powers, Oklahoma City, Oklahoma for Defendants-Appellees, Oklahoma City Urban Renewal authority, Authority Commissioners Stanton L. Young, Fred Jones Hall, J. Larry Nichols, Warren Gardner, James R. Tolbert III, former Commissioner William O. (Bill) Johnstone, Executive Director Tiana P. Douglas and General Counsel James Dan Batchelor.

Joseph H. Bocock, Robert J. Ross, McAfee & Taft, Oklahoma City, Okl. for Defendant-Appellee, Bap-Bricktown, L.L.C.

Rod L. Cook, Roberta Browning Fields, Patricia L. Franz, Rainey, Ross, Rice & Binns, Oklahoma City, Okl. for Defendant-Appellee, Oklahoma Gas & Electric Company (OG & E).

OPINION

PER CURIAM,

§ 1 On March 15, 2000, Plaintiffs, Moshe Tal and a group of Oklahoma City citizens he organized called Taxpayers Against Ripoffs (T.A.R.), filed suit against the City of Oklahoma City and many other defendants under the *Qui Tam* statutes, 62 O.S.1991 §§ 372 and 373. [FN1] Tal's and T.A.R.'s suit was based on a notice, denominated a "Written Demand," which they had filed with the City Clerk on January 12, 1999. Defendants moved to dismiss on the ground that this Court had held in City of Oklahoma City v. Oklahoma City Urban Renewal Authority, 1999 OK 71, 988 P.2d 901, Tal I, that Tal and T.A.R. lacked standing to prosecute a *Qui Tam* action. Prior to filing his Written Demand Tal had led a group that had made an unsuccessful bid to develop a part of the Bricktown project. The nature of the project and Tal's claims are spelled out in some detail in Tal I.

FN1. Title 62 O.S.1991 § 372 provides:

> Every officer of the state and of any county, township, city, town or school district, who shall hereafter order or direct the payment of any money or transfer of any property belonging to the state or to such county, city, town or school district, in settlement of any claim known to such officers to be fraudulent or void, or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made or attempted to be made, for the state or any such county, city, town or school district, by any officer thereof, and every person, having notice of the facts, with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money shall be paid or such transfer of property shall be made, shall be jointly and severally liable in damage to all innocent persons in any manner injured thereby, and shall be furthermore jointly and severally liable to the state, county, city, town or

school district affected, for triple the amount of all such sums of money so paid, and triple the value of property so transferred, as a penalty, to be recovered at the suit of the proper officers of the state or such county, city, town or school district, or of any resident taxpayer thereof, as hereinafter provided.

Title 62 O.S.1991 § 372 provides:

Upon the refusal, failure, or neglect of the proper officers of the state or of any county, township, city, town, or school district, after written demand made upon them by ten resident taxpayers of the state or such county, township, city, town, or school district, to institute or diligently prosecute proper proceedings at law or in equity for the recovery of any money or property belonging to the state, or such county, township, city, town, or school district, paid out or transferred by any officer thereof in pursuance of any unauthorized, unlawful, fraudulent, or void contract made, or attempted to be made, by any of its officers for the state or any such county, township, city, town, or school district, or for the penalty provided in the preceding section, any resident taxpayer of the state or such county, township, city, town, or school district affected by such payment or transfer after serving the notice aforesaid and after giving security for cost, may in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action which the proper officers of the State, county, township, city, town, or school district might institute and maintain for the recovery of such property, or for said penalty; and such municipality shall in such event be made defendant, and one-half (½) the amount of money and one-half (½) the value of the property recovered in any action maintained at the expense of a resident taxpayer under this section, shall be paid to such resident taxpayer as a reward.

§ 2 In Tal I, Tal and T.A.R. based their claims on the same Written Demand, dated January 12, 1999, that they rely on

here. The issue in Tal I was whether Tal and T.A.R. had standing to intervene in a declaratory judgment action, which the City of Oklahoma City had filed in response to Tal ***271** and T.A.R.'s Written Demand. We held that Tal and T.A.R. had no such right because,

> ... there is nothing in the record to reflect that Oklahoma City acted in bad faith. Its actions were taken under the glare of public scrutiny and were resisted by a significant minority of the City Council. That the disagreements among Council members were resolved in a way that Tal and the other T.A.R. members do not like does not support in any way T.A.R.'s claim that the Development Agreements were either fraudulent, unlawful, or otherwise inadequate.

Tal I, 1999 OK 71 at § 20, 988 P.2d 901. Appellee's contended in their brief in support of their motions to dismiss that our opinion in Tal I precluded the re-litigation of Tal and T.A.R.'s claims because it determined that Tal and T.A.R. lacked standing to prosecute a *Qui Tam* action under their Written Demand of January 12, 1999 against the City and the other appellees. We agree.

§ 3 In their brief in opposition to appellants' motions to dismiss, Tal and T.A.R. reargued the claims that they had unsuccessfully asserted in Tal I. They claimed that the City could not adequately represent Tal and T.A.R.'s interests and that the allegations in their Written Demand showed that they had a right to prosecute a *Qui Tam* action. Nowhere in their brief did Tal and T.A.R. attempt to explain why they had standing to prosecute a *Qui Tam* action under their Written Demand, although we had held in Tal I that they lacked standing to do so.

§ 4 Tal and T.A.R. filed a second action that resulted in a second appeal in Tal v. Norick, 1999 OK 85, 991 P.2d 999, Tal II. There, Tal and T.A.R. brought another *Qui Tam* suit against the City and others that involved the Bricktown Ballpark project. In Tal II we affirmed the trial court, who had granted

the defendants' motions to dismiss saying,

> The arguments Tal and T.A.R. make here were fully discussed and disposed of in Tal I. The similarity between the record presented here and the record we considered in Tal I convinces us that there is no reason to restate here our reasoning in Tal I. We therefore hold that the trial court did not err in concluding that the *qui tam* action was prematurely brought.

Tal II, 1999 OK 85 at § 9, 991 P.2d 999. We so held because we had previously held in Tal I that the City of Oklahoma City had adequately represented the interests of all its taxpayers, including the members of T.A.R., and was entitled to the presumption that it was doing so in good faith. In their brief Tal and T.A.R. disingenuously claimed that because the trial court in Tal II had dismissed their suit there because it was "premature," they had a right to bring this suit. But Tal II involved a different written demand and a different project. Further, we expressly held in Tal II that the issues in Tal I and Tal II were "substantially similar." Tal II, at § 8. Nothing in Tal II, therefore, supports Tal and T.A.R.'s claim that they had a right to reassert here the claims they had made in Tal I.

§ 5 Although, a central issue in this appeal is whether the appeal is a collateral attack on the judgment entered in Tal I, Tal and T.A.R. failed to fulfill the requirements of Part III of our petition in error form, which calls for information concerning "Related or Prior Appeals." [FN2] All prior appeals involving the same parties or involving the same issue must be divulged and *if there are none the appellant must so state.* Nevertheless, Tal and T.A.R. left blank this section of their petition in error.

> FN2. Part III of the petition in error form reads in its entirety as follows:
>
> III. RELATED OR PRIOR APPEALS
>
> List all prior appeals involving same parties or same

trial court proceeding:

List all related appeals involving same issues:

(Identify by Style, Appeal Number, Status, and citation, if any. *If none, so state.*)

Emphasis added.

[1][2] § 6 We hold that Tal and T.A.R.'s *Qui Tam* action here raises issues that were disposed of in Tal I. The trial court, therefore, correctly dismissed Tal and T.A.R.'s suit. In Tal I we held that Tal and T.A.R. lacked standing to prosecute a *Qui Tam* ***272** action because they failed to make a showing that the City was not adequately representing their interests. That holding should have ended Tal and T.A.R.'s attacks against the City and the other participants in the Bricktown development projects but it did not do so. We hold that Tal and T.A.R.'s claims here were clearly and unequivocally disposed of in Tal I. Further, Tal and T.A.R. violated our rules in failing to divulge in their petition in error in this appeal the relationship between this appeal, Tal I, and Tal II.

[3] § 7 Finally, we address Tal and T.A.R.'s August 28, 2000 motion to strike the supplement to the record filed by OG & E. Tal and T.A.R. claim that OG & E's supplement should be stricken because OG & E's motion to dismiss was not ruled on in the trial court order dismissing the actions against the other defendants. We disagree.

§ 8 Clearly, our ruling in Tal I, which we have reaffirmed here, stands for the proposition that Tal and T.A.R. lacked standing to prosecute *Qui Tam* actions arising from the Bricktown project, regardless of whom the individual defendants might be. Tal and T.A.R. have no more standing to prosecute a *Qui Tam* action against OG & E than they had to prosecute one against the other defendants to this appeal. Although we think this fact should by now be clear to Tal and T.A.R., we are

concerned that Tal and T.A.R.'s pending motion might have been designed to create a circumstance that they believed would allow them to prosecute yet another appeal in this case after this one. Tal and T.A.R.'s motion to strike OG & E's supplement to the record is, therefore, denied.

§ 9 We affirm the trial court's order dismissing Tal and T.A.R.'s action because Tal and T.A.R. lack standing to prosecute this action concerning the Bricktown project.

TRIAL COURT'S ORDER OF DISMISSAL AFFIRMED

SUMMERS, C.J., HARGRAVE, V.C.J., HODGES, LAVENDER, KAUGER, BOUDREAU, and WINCHESTER, JJ.--concur.

WATT, J.--concurring in part, dissenting in part.

OPINION CONCURRING IN PART AND DISSENTING IN PART

WATT, Justice,

§ 1 I concur in the majority's conclusion that Tal and T.A.R.'s action giving rise to this appeal is barred as a result of our finding in Tal I that Tal and T.A.R. lacked standing to prosecute any further action concerning the Bricktown project. I dissent, however, because of the majority's failure to address what is to me quite clear: that Tal and T.A.R.'s conduct in filing and prosecuting this action is likely sanctionable. Tal and T.A.R. filed and continue to prosecute this appeal, despite the fact that the suit giving rise to this appeal is based on the same *Qui Tam* notice that this Court held more than a year ago failed to show Tal and T.A.R. had standing to prosecute a *Qui Tam* action. Further, this is but the latest episode in serial lawsuits and appeals by Tal and T.A.R. that have hindered the Bricktown project, including, according to appellees, the loss of investors who have refused to participate only because of this constant litigation. The potential losses to the Bricktown project participants created by this serial litigation cannot have been lost on Tal and T.A.R.

§ 2 Sanctions in the form of additional costs and attorneys' fees are awardable under Rule 1.2, Oklahoma Supreme Court Rules; [FN1] 12 O.S. Supp.1996 § 995 ; [FN2] and *27320 O.S.1991 § 15.1, [FN3] for filing and prosecuting appeals that are non-meritorious, frivolous, or violate the Court's rules. It appears to me that Tal and T.A.R. have likely violated some or all of these provisions. Consequently I would have granted leave to appellees to file in the trial court motions for appropriate sanctions from the violation of the last cited statutes and Court Rule in the conduct of this appeal, and, should any of the appellees decide to file such motions, I would direct the trial court to hear and decide them. In this connection, I note that the trial court has granted appellees' motions for sanctions and attorneys' fees incurred as a result of Tal and T.A.R.'s conduct in having filed the suit in the first place.

FN1. Rule 1.2 provides,

Compliance with these rules is required. In case of failure to comply with any rule or order of the Court, the Court may continue or dismiss a cause, reverse or affirm the judgment appealed, render judgment, strike a filing, assess costs or take any other action it deems proper.

FN2. Title 12 O.S. Supp.1996 § 995 provides: The Oklahoma Supreme Court or Court of Civil Appeals shall dismiss an appeal that is frivolous, and may impose sanctions against the appellant, the appellant's attorney, or both. The sanctions that may be imposed may include the reasonable expenses incurred because of the filing of the appeal, including a reasonable attorney's fee. The court shall dismiss a cross-appeal or an original proceeding that is frivolous and may impose sanctions as provided by this section.

FN3. Title 20 O.S.1991 § 15.1 provides:

On any appeal to the Supreme Court, the prevailing party may petition the court for an additional attorney fee for

> the cost of the appeal. In the event the Supreme Court or its designee finds that the appeal is without merit, any additional fee may be taxed as costs.

§ 3 In their August 28, 2000 motion to strike the supplement to the record filed by OG & E, Tal and T.A.R. claim that OG & E's supplement should be stricken because OG & E's motion to dismiss was not ruled on in the trial court order dismissing the actions against the other defendants. I concur in the majority's ruling denying that motion but it seems to me that a discussion of Tal and T.A.R.'s possible motives in filing their motion is in order.

§ 4 Clearly, this Court's ruling in Tal I, which has been reaffirmed here, stands for the proposition that Tal and T.A.R. lacked standing to prosecute *Qui Tam* actions arising from the Bricktown project, regardless of whom the individual defendants might be. As noted by the majority, Tal and T.A.R. have no more standing to prosecute a *Qui Tam* action against OG & E than they had to prosecute one against the other defendants to this appeal. Although, it seems to me, this fact should by now be clear to Tal and T.A.R., I am concerned that Tal and T.A.R.'s August 28, 2000 motion might have been designed to create a circumstance that they believed would allow them to prosecute yet another appeal in this case after this one. On this score I observe that motions for sanctions for Tal and T.A.R.'s conduct in this case are presently pending and I would have granted appellants leave *sua sponte* to file additional motions for sanctions. I would expect, therefore, that Tal and T.A.R. would engage in no more conduct designed to lengthen this litigation or any other arising from the Bricktown development.

§ 5 I join in the majority's affirmation of the trial court's order dismissing Tal and T.A.R.'s action because Tal and T.A.R. lack standing to prosecute any action concerning the Bricktown project. I dissent because I would have remanded the matter to the trial court with instructions to hear and decide, under Rule 1.2, Oklahoma Supreme Court Rules; 12 O.S. Supp.1996

§ 995 ; and 20 O.S.1991 § 15.1, any motions for sanctions or other appropriate relief that appellees may file arising out of Tal and T.A.R.'s conduct in their prosecution of this appeal.

END OF DOCUMENT

2. *Journal Entry of Judgment*, District Court of Oklahoma County, Oklahoma CJ-2000-2052 - filed May 23, 2000

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, ex rel., Moshe Tal, a resident taxpayer of The City of Oklahoma City, et al.,	)	No: CJ-2000-2052
Plaintiffs,	)	
vs.	)	
THE CITY OF OKLAHOMA CITY, a municipal corporation, et. al.,	)	
Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

1. The captioned matter came before this Court on the motions to dismiss the Petition described below.

2. The Petition was filed by "Members of T.A.R.," Moshe Tal, Ronald D. Benton, Lisa (Michelle) Bowers, Tracy (Joe) Ford (a/k/a/ "T.J.", Robby (James) Lovett, W.D. McGowen, Dhybon McGowen, Dr. John Migliaccio, Steve Migliaccio, Physilla (Jo) Polley, Edna (Ennise) Richardson, Morning-Star Takapu, Kasey (Leigha) Toms, and Michael (Lawrence) Toms (collectively the "Plaintiffs") against multiple defendants.

3. Motions to dismiss the Petition were filed by the following defendants:

   a. Oklahoma City Urban Renewal Authority, Stanton L. Young, Fred Jones Hall, J. Larry Nichols, Warner

Gardner, James R. Tolbert III, William O. ("Bill") Johnstone, Tiana P. Douglas and Dan Batchelor;

b. The City of Oklahoma City, Ronald J. Norick, Kirk D. Humphreys, James E. Thompson, William O. west and Daniel T. Brummitt;

c. BAP-Bricktown L.L.C., TMK/Hogan, Hogan Property Management, L.L.C., Dan Randolph Hogan, OKC Athletic Club Limited Partnership, Bricktown Parking Investors, L.L.C., Bricktown TMK/Hogan Entertainment, L.L.C., and Bricktown TMK/Hogan Parking L.L.C..

4. Having reviewed the Petition, being familiar with this Court's file in *City of Oklahoma City v. Oklahoma City Urban Renewal Authority, et al.*, CJ-99-487-67 (District Court of Oklahoma County), having reviewed the arguments contained in the motions, brief in opposition, and replies, and being fully appraised of the premises,

THE COURT FINDS, ORDERS, ADJUDGES AND DECREES that:

1. The motion to dismiss filed by Oklahoma City Urban Renewal Authority, Stanton L. Young, Fred Jones Hall, J. Larry Nichols, Warner Gardner, James R. Tolbert III, William O. ("Bill") Johnstone, Tiana P. Douglas and Dan Batchelor should be and hereby is sustained and the Petition is dismissed with prejudice as to each of them.

2. The motion to dismiss filed by the City of Oklahoma City, Ronald J. Norick, Kirk D. Humphreys, James E. Thompson, William O. west and Daniel T. Brummitt should be and hereby is sustained and the Petition is dismissed with prejudice as to each of them.

3. The motion to dismiss filed by BAP-Bricktown L.L.C., TMK/Hogan, Hogan Property Management, L.L.C., Dan Randolph Hogan, OKC Athletic Club Limited

Partnership, Bricktown Parking Investors, L.L.C., Bricktown TMK/Hogan Entertainment, L.L.C., and Bricktown TMK/Hogan Parking L.L.C. should be and hereby is sustained and the Petition is dismissed with prejudice as to each of them.

THE COURT FURTHER FINDS, ORDERS, ADJUDGES AND DECREES, and all parties have stipulated, the Plaintiffs' claims against Defendants Edwards Theatres Circuit, Inc., Torchmark Corporation, Oklahoma Gas and Electric Company, The Benham Group, Torchmark Development Corporation, and TMK/Hogan Income Properties, L.P., are derived from and dependent upon or related to the claims that have been dismissed against the other defendants.

THE COURT FURTHER FINDS, ORDERS, ADJUDGES AND DECREES, that because of the derivative nature of the Plaintiffs' claims against the defendants Edwards Theatres Circuit, Inc., Torchmark Corporation, Oklahoma Gas and Electric Company, The Benham Group, Torchmark Development Corporation, and TMK/Hogan Income Properties, Plaintiffs' Petition should be and is hereby dismissed with prejudice as to each of them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this is a final determination of Plaintiffs' claims against all defendants, and each of them is awarded judgment, and judgment is entered on their behalf and against Plaintiffs, and each of them.

s/Niles Jackson

NILES JACKSON

JUDGE OF THE DISTRICT COURT

[11 PAGES OF PARTIES' SIGNATURES OMITTED]

II. RULE 14 1(h)(i)(ii): Other relevant opinions and orders in companion cases:

1. Oklahoma Supreme Court Opinion - *City of Oklahoma City v. Oklahoma City Urban Renewal Authority, et al,* 1999 OK 71, 988 P.2d 901 - Aug. 30, 1999. As Corrected Sept. 1, 1999. Rehearing Denied Sept. 30, 1999. (a/k/a/ *Tal I*)

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988 P.2d 901 - 1999 OK 71

(Cite as: 988 P.2d 901)

Supreme Court of Oklahoma.

The CITY OF OKLAHOMA CITY, a municipal corporation, Plaintiff-Appellee,

v.

The OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; Bricktown Parking Investors, L.L.C., an Oklahoma limited liability company; and Bricktown TMK/Hogan Entertainment, L.L.C., an Oklahoma limited liability company,

Defendants-Appellees,

v.

Moshe Tal, Lisa (Michelle) Bowers, Dr. John Miglaccio, Steve Miglaccio, Joy Parker, Physilla (Jo) Polley, Edna (Ennise) Richardson, Morning-Star Takapu, Robby (James) Lovett, W.D. Mcgown, and Michael (Lawrence) Toms, individually and as an association known as Taxpayers Against Ripoffs ("T.A.R."),

Appellants.

No. 92,874.

Aug. 30, 1999.

As Corrected Sept. 1, 1999.

Rehearing Denied Sept. 30, 1999.

Individual taxpayer and taxpayer group brought motions for permissive intervention in city's declaratory judgment action relating to the legality of a development agreement. The District Court, Oklahoma County, Karl Gray, J., denied the motions. Taxpayers appealed. The Supreme Court, Watt, J., held that: (1) as a matter of first impression, city's declaratory judgment action presented a justiciable and actual controversy, within meaning of declaratory judgment statute, though both city and the defendant developers agreed that the development agreement was legal, and (2) taxpayers did not rebut the presumption that city would act in good faith in the declaratory judgment action.

Affirmed.

Summers, C.J., concurred in result.

West Headnotes

[1] **Parties ⇨40(1)**

287k40(1) Most Cited Cases

Taxpayers may intervene in an action brought by a public body only if the public body fails to respond to a written demand with action taken in good faith. 62 Okl.St.Ann. §§ 372, 373.

[2] **Parties ⇨44**

287k44 Most Cited Cases

Whether taxpayers have met the burden of showing the public body failed to respond to a written demand with action taken in good faith, as basis for taxpayer intervention in the action, is left to the sound discretion of the trial court. 62 Okl.St.Ann. §§ 372, 373.

[3] **Declaratory Judgment ⇨306**

118Ak306 Most Cited Cases

Taxpayers' allegations that a more attractive development agreement might have been made and that city council members had disagreed as to which developer should be awarded the development agreement did not rebut the presumption that city would act in good faith in declaratory judgment action regarding the legality of the agreement, and thus, taxpayers were not entitled to permissive intervention in the declaratory judgment action. 12 Okl.St.Ann. § 2024, subd. B, par. 2; 62 Okl.St.Ann. §§ 372, 373.

[4] **Declaratory Judgment ⇨392.1**

118Ak392.1 Most Cited Cases

Individual taxpayer and taxpayer group were not prejudiced by trial court's denial of their motions for permissive intervention in city's declaratory judgment action relating to legality of development agreement, where the trial court considered individual taxpayer's 129-page deposition and the depositions of group members regarding the alleged unlawfulness of the agreement and considered the group's written demand to the city alleging city's failure to prosecute for return of money or property. 12 Okl.St.Ann. § 2024, subd. B, par. 2; 62 Okl.St.Ann. §§ 372, 373.

[5] **Declaratory Judgment ⇨209**

118Ak209 Most Cited Cases

City's declaratory judgment action regarding legality of development agreement presented a justiciable and "actual controversy," within meaning of declaratory judgment statute, though both city and the defendant developers agreed that the development agreement was legal, where the action placed at issue in an unbiased court the contentions of taxpayer group that the agreement was fraudulent or otherwise unlawful and the trial court heard the taxpayer group's arguments. 12 Okl.St.Ann. § 1651.

***902** Appeal from the District Court of Oklahoma County,

Oklahoma, Honorable Karl Gray, District Judge.

§ 0 The trial court denied the motion to intervene and motion for continuance of Appellants Moshe Tal, et al., who denominate themselves as Aan association known as Taxpayers Against Ripoffs ('T.A.R.')." We hold that the record supports the trial court's order.

JUDGMENT OF THE TRIAL COURT AFFIRMED

William O. West, Municipal Counselor, and David Brummitt, Assistant Municipal Counselor, for Appellee, City of Oklahoma City.

Dan Batchelor and Janis Powers, Batchelor and Powers, Oklahoma City, Oklahoma, for Appellee, Oklahoma City Urban Renewal Authority.

Melvin R. McVay, Jr., Robert N. Sheets, Heather L. Hintz, and Ellen K. Spiropoulos, Phillips, McFall McCaffrey, McVay & Murrah, Oklahoma City, Oklahoma, for Appellees, Bricktown Parking Investors, L.L.C. ***903** and Bricktown TMK/Hogan Entertainment, L.L.C.

Bryce S. Kennedy, Jr., Kennedy & Associates, Enid, Oklahoma, for Appellants.

OPINION

WATT, Justice.

§ 1 This is an appeal from the order of the District Court of Oklahoma County, Honorable Karl Gray, District Judge, denying the motion to intervene and motion for continuance of Moshe Tal and others, who call themselves "an association known as Taxpayers Against Ripoffs ('T.A.R.')." Appellants appeal from the trial court's order. Tal is an unsuccessful bidder for the Redevelopment Agreements on the MAPS Bricktown Redevelopment Project, which Agreements were ultimately awarded to appellees, Bricktown Parking Investors and TMK/Hogan.

FACTS AND PROCEDURAL BACKGROUND

§ 2 On January 12, 1999 Tal, and the other members of T.A.R., signed a Written Demand, which was delivered to the City Clerk of appellee, City of Oklahoma City pursuant to 62 O.S.1991 §§ 372 and 373. [FN1] Sections 372 and 373 provide that if, after written demand is made by ten resident taxpayers, a public body fails to prosecute proceedings to recover money or property belonging to the public body, which the taxpayers claim was unlawfully or fraudulently obtained, any resident taxpayer may sue in the name of the state to recover the money or property plus treble damages from the officials responsible for the wrongful acts; the taxpayer will be entitled to one-half the money or one-half the value of the property recovered. Such an action is known as a "*Qui tam* " action, that is "An action brought on a penal statute by an informer, who sues for the penalty ..." *The Oxford English Dictionary on CD- ROM* (2d Ed.1994).

FN1. Title 62 O.S.1991 § 372 provides:

Every officer of the state and of any county, township, city, town or school district, who shall hereafter order or direct the payment of any money or transfer of any property belonging to the state or to such county, city, town or school district, in settlement of any claim known to such officers to be fraudulent or void, or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made or attempted to be made, for the state or any such county, city, town or school district, by any officer thereof, and every person, having notice of the facts, with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money shall be paid or such transfer of property shall be made, shall be jointly and severally liable in damage to all innocent persons in any manner injured thereby, and shall be furthermore jointly and severally liable to the state, county, city, town or school district affected, for triple the amount of all such

sums of money so paid, and triple the value of property so transferred, as a penalty, to be recovered at the suit of the proper officers of the state or such county, city, town or school district, or of any resident taxpayer thereof, as hereinafter provided.

Title 62 O.S.1991 § 373 provides: Upon the refusal, failure, or neglect of the proper officers of the state or of any county, township, city, town, or school district, after written demand made upon them by ten resident taxpayers of the state or such county, township, city, town, or school district, to institute or diligently prosecute proper proceedings at law or in equity for the recovery of any money or property belonging to the state, or such county, township, city, town, or school district, paid out or transferred by any officer thereof in pursuance of any unauthorized, unlawful, fraudulent, or void contract made, or attempted to be made, by any of its officers for the state or any such county, township, city, town, or school district, or for the penalty provided in the preceding section, any resident taxpayer of the state or such county, township, city, town, or school district affected by such payment or transfer after serving the notice aforesaid and after giving security for cost, may in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action which the proper officers of the State, county, township, city, town, or school district might institute and maintain for the recovery of such property, or for said penalty; and such municipality shall in such event be made defendant, and one-half (1/2) the amount of money and one-half (1/2) the value of the property recovered in any action maintained at the expense of a resident taxpayer under this section, shall be paid to such resident taxpayer as a reward.

§ 3 Appellants' Demand alleged that certain Development Agreements, to which Oklahoma City was not a party, and which had been entered into between the Oklahoma City

Urban Renewal Authority, Bricktown Parking Investors, and TMK/Hogan Entertainment, were unlawful. Appellants demanded ***904** that Oklahoma City file a lawsuit to declare the Development Agreements void and to recover certain property that Oklahoma City had conveyed to the Urban Renewal Authority. The record reflects that Moshe Tal had enlisted the support of the other signatories of the Demand, the members of the T.A.R. association.

§ 4 In response to appellants' Demand, Oklahoma City filed a declaratory judgment action against the Urban Renewal Authority, Bricktown Parking Investors, and TMK/Hogan on January 16, 1999. Oklahoma City asked for a declaration that the Development Agreements were lawful and, alternatively if the court should decide that Development Agreements were unlawful, that the court order the Urban Renewal Authority to return the property that Oklahoma City had conveyed to it. Notice of the suit was given to T.A.R.'s attorney. On January 17, 1999, Bricktown Parking Investors filed its Answer, Counterclaim and Cross Claim, and TMK/Hogan filed its answer. On February 3, 1999, upon stipulation of the parties, the trial court entered an order setting the matter for non-jury trial on March 1, 1999.

§ 5 On February 22 and 23, 1999, defendants took the depositions of appellants, T.A.R. members, Moshe Tal, Lisa Bowers, W.D. McGown, Joy Parker, Pyhsilla Jo Polley, Edna Ennise Richardson, Morning-Star Takapu, Michael Toms, and Steve Migliaccio. Appellants' attorneys appeared at each of the depositions. Tal's deposition was 129 pages long. After the trial had commenced, appellants' attorney filed a motion to intervene and for continuance. The trial court, after argument of counsel, considering the depositions of Tal and the other T.A.R. members who had been deposed, and also considering T.A.R.'s Written Demand, denied T.A.R.'s motion to intervene.

§ 6 Tal and the other T.A.R. members appealed from the trial court's ruling. The appellees then filed motions that this Court retain jurisdiction and treat the appeal on an expedited basis.

We granted the appellees' motions. Appellees also moved to dismiss appellants' appeal, which motion we reserved for disposition to the decisional stage of the appeal. As a consequence of the result of this appeal appellees' motions are moot.

§ 7 After the disposition of T.A.R.'s motion to intervene, the case was tried on the merits and the trial court found that the Agreements were lawful and entered a mandatory injunction, which requires that the Urban Renewal Authority carry out the terms of the Agreements between itself and the developers, Bricktown Parking Investors and TMK/Hogan. The record of the trial was made a part of the record on appeal here.

§ 8 The Urban Renewal Authority represents that the developers are relying on their ability to raise money from third party investors and lenders, and upon the participation of a company to commit to build a theater complex in the area. According to the Urban Renewal Authority, the pendency of this appeal has meant that the parties to this litigation have been unable to satisfy the requirements of these third parties, which inability has prevented the them from funding the design and letting a construction contract to carry out improvements to the Bricktown Canal, which failure prevents the Urban Renewal Authority from complying with the requirements of the mandatory injunction. The completion of these improvements are conditions precedent to the development of the Bricktown entertainment complex.

The MAPS Project and the Bricktown Development Plan

§ 9 Some background concerning the MAPS project and the development of the Bricktown area are necessary for a thorough understanding of the issues in this case. The conveyance from Oklahoma City to the Urban Renewal Authority and the Development Agreements between the Urban Renewal Authority, Bricktown Parking Investors, and TMK/Hogan were carried out as part of the Oklahoma City Metropolitan Area Projects program, known as "MAPS." The

MAPS project began with a one-cent sales tax increase, which the voters of Oklahoma City approved in 1993. The MAPS sales tax produced $300,000,000.00 to be used in the construction of new projects, including the *905 Bricktown Ball Park, the Bricktown Canal, and the renovation of existing structures, such as the Myriad Convention Center.

§ 10 One of the MAPS program's primary purposes is to attract private investors to invest in the areas being developed as part of the program. To this end, Oklahoma City's City Council passed a Redevelopment Plan for the Bricktown area in 1997. The Redevelopment Plan was designed to attract private investors to build sports related parking and entertainment related improvements. Appellant Moshe Tal was the leader of one group of investors who sought the contracts to carry out the Redevelopment Plan but the City Council, after widely publicized hearings and based on an extremely close vote, ultimately awarded the Development Agreements to Bricktown Parking Investors and TMK/Hogan rather than to Tal's group. The final decision was made by the City Council only after two years of public meetings, public notices, public hearings, and citizen review.

§ 11 Oklahoma City had conveyed property it had acquired in the area to the Urban Renewal Authority with the proviso that Oklahoma City would receive the net proceeds from the sale of the property by the Urban Renewal Authority and that the price paid to the Urban Renewal Authority for the property would "be not less than the actual 'fair market value' of said property." The property was appraised on three separate occasions by professional appraisers before it was sold. The trial court found and the record supports that the Urban Renewal Authority received fair market value for the property.

§ 12 T.A.R. also complained that the Agreements failed to serve a public purpose and provided insufficient safeguards and accountability to the Urban Renewal Authority and Oklahoma City. The trial court held that the Agreements did provide for adequate accountability and safeguards.

§ 13 After receiving the property and in furtherance of the redevelopment plan, the Urban Renewal Authority made Development Agreements with Bricktown Parking Investors and TMK/Hogan. Under its Agreement with the Urban Renewal Authority, TMK/Hogan will purchase a development site at its fair market value of about $3.3 million and develop the Bricktown entertainment Center at an estimated cost of over $30 million. Bricktown Parking Investors agreed to develop 1,200 parking spaces, subject to the later relocation of the parking to another site in order to make room for the development of the Entertainment Center.

ISSUE

§ 14 There is but a single, narrow issue in this case: Did the trial court err in denying T.A.R.'s motions to intervene and for continuance? We hold that the trial court correctly denied T.A.R.'s motions.

DISCUSSION

§ 15 The right of one to intervene in litigation to which he is not a party is governed by 12 O.S.1991 § 2024.B.2, which authorizes a court to allow permissive intervention only under the following circumstances:

> When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Tal and T.A.R. do not claim that T.A.R. was entitled to intervene as of right. Their claim is that the trial court erred

in not allowing T.A.R. to intervene on a permissive basis under § 204.B.2.

§ 16 As previously noted, Tal and T.A.R. formulated their motion to intervene as a *qui tam* action under 62 O.S.1991 §§ 372 and 373, which started with T.A.R.'s "Written Demand" in which it claimed a right to a reward of one-half of any amounts recovered. ***906** Under the record, T.A.R. was not entitled to intervene as a *qui tam* plaintiff.

I. T.A.R. failed to show that Oklahoma City had acted in bad faith. Such a showing is a prerequisite to any right to intervene.

[1][2] § 17 Taxpayers may intervene in an action brought by a public body only if the public body fails to respond to a written demand with action taken in good faith. Braly v. Ford, 1941 OK ---- 116 P.2d 988. Whether that burden has been met is left to the sound discretion of the trial court. Tulsa Rock Co. v. Williams, 1982 OK 10 § 5, 640 P.2d 530.

[3] § 18 T.A.R. claims that Oklahoma City's suit was non responsive to T.A.R.'s Demand because Oklahoma City failed to support T.A.R.'s claims. We hold that Oklahoma City was not required to do so. In Braly we held

Public officers are always presumed, in the absence of any showing to the contrary, to be ready and willing to perform their duty; and until it is made to appear that they have refused to do so, or have neglected to act under circumstances rendering this equivalent to a refusal, there is no occasion for the intervention of the citizen for the protection of himself and others similarly situated.

116 P.2d at 990 (Citation omitted.)

§ 19 T.A.R. claims that Braly is distinguishable from the facts in the case at bar but we find this claim unconvincing. T.A.R. relies on State ex rel. Lockhart v. Board of Com' rs of Lincoln County, 1946 OK ----, 197 Okla. 605, 173 P.2d 725. There we held that allegations of fraud were sufficient to

state a cause of action. But Lockhart involved the question of what is required at the pleading stage to successfully resist a demurrer to the petition being sustained. Here the issue is much different from the issue involved in Lockhart. The case has been tried and the record developed supports the trial court's finding that the property at issue was sold at its fair market value and that the protections for the public to safeguard its interests spelled out in the Agreements were adequate. This ends the inquiry and T.A.R.'s expression of a contrary opinion in its Demand, without factual support, does not change the result.

§ 20 T.A.R. would have us reverse the presumption of good faith to which Oklahoma City is entitled and assume that, without T.A.R.'s intervention, Oklahoma City would act in bad faith. In any event, there is nothing in the record to reflect that Oklahoma City acted in bad faith. Its actions were taken under the glare of public scrutiny and were resisted by a significant minority of the City Council. That the disagreements among Council members were resolved in a way that Tal and the other T.A.R. members do not like does not support in any way T.A.R.'s claim that the Development Agreements were either fraudulent, unlawful, or otherwise inadequate.

§ 21 That a more attractive deal for Oklahoma City might have been made, as T.A.R. asserts it could and should have been made, is not for this Court's consideration. Such issues were for the City Council and the City Council resolved them. There being no showing of fraud or unlawful activity here, T.A.R. lacks standing to attack the City Council's decisions.

[4] § 22 Tal claims that the failure of the trial court to allow him to intervene and hear his testimony was prejudicial to his rights and those of T.A.R. We note, however, that the trial court considered Tal's 129 page deposition and Tal does not suggest that there are any facts to support his claims of unlawfulness beyond those contained in the allegations in T.A.R.'s Demand. The trial court read and considered

T.A.R.'s Written Demand and the depositions of all its members. It is obvious that the trial court concluded that the factual allegations in T.A.R.'s Demand and the deposition testimony of its members were insufficient to support T.A.R.'s claim for intervention. For the reasons previously discussed, we agree.

§ 23 Because we conclude that Moshe Tal's petition for intervention was correctly denied, he stands excluded as a party litigant below and has no standing to tender for our review any errors made by the trial court.

***907** *II. Oklahoma City' s action against the Urban Renewal Authority, Bricktown Parking Investors, and TMK/Hogan was a justiciable case or controversy.*

[5] § 24 T.A.R. contends that Oklahoma City's action against the Urban Renewal Authority, Bricktown Parking Investors, and TMK/Hogan was not a justiciable case or controversy because the parties agreed that the Development Agreements were valid. In support of its claim on this issue T.A.R. cites Gordon v. Followell, 1964 OK 74, 391 P.2d 242. Gordon, however, does not support T.A.R.'s claim. There we said, "We therefore hold that the petition was insufficient to invoke the jurisdiction of the court under the declaratory judgments act." Gordon, 1964 OK 74 at § 10 391 P.2d 242.

§ 25 T.A.R. claims that Oklahoma City's allegation that the Development Agreements were lawful meant that there was not an actual case or controversy because the parties did not have opposing interests. This Court has not previously addressed this issue. The Supreme Court of Wyoming, however, did so in Brimmer v. Thomson, 521 P.2d 574 (Wyo.1974).

§ 26 In Brimmer, the Wyoming Attorney General brought a declaratory judgment action under that state's version of the Uniform Declaratory Judgment Act, which was substantially similar to the Oklahoma version of the Act. The Attorney General and some of the defendants, state senators who were

prospective candidates for governor, agreed that the defendants were eligible for the office of governor. The suit was brought because an earlier Attorney General's opinion had questioned the eligibility of the candidates. The Wyoming court held that the declaratory judgment action presented an actual case or controversy because the question created by the earlier Attorney General's opinion as to the eligibility of the candidates supplied the necessary adversity. The fact that the plaintiff and some of the defendants were in agreement did not change the determination that an actual case of controversy existed.

§ 27 To the same effect as Brimmer see State ex rel. Miller v. State Board of Education, 56 Idaho 210, 52 P.2d 141, 143 (1935). There the Idaho Supreme Court held that the public importance of the issue supported plaintiff's claim that there was an actual case or controversy despite the fact that there was no disagreement between the parties. In New Jersey Power & Light Company, 45 N.J. 237, 212 A.2d 136, 139 (1965) the court held that a declaratory judgment was valid, although both plaintiff and defendant believed the contract at issue to be valid.

§ 28 We agree with the analysis of the Wyoming, Idaho, and New Jersey courts. Applying the reasoning of their opinions here, we hold that the an actual case or controversy arose here as a result of the threat created by T.A.R.'s claims that the Development Agreements were fraudulent or otherwise unlawful. This conclusion is not altered by the fact that the parties to the declaratory judgment action all believed the Agreements to be valid. Thus, a justiciable case or controversy was presented to the trial court for resolution. When Oklahoma City filed its declaratory judgment action, it placed in issue T.A.R.'s contentions for resolution by an unbiased court. T.A.R. was entitled to no more.

§ 29 T.A.R. does not claim that Oklahoma City's suit against Bricktown Parking Investors and TMK/Hogan was collusive or fictitious. In any event, the record would not support

such a conclusion. The allegations by all parties that the Agreements were lawful did not deprive Oklahoma City's action of its justiciable character. The agreement among Oklahoma City and the other parties as to how the issues should be resolved was appropriate. Those issues were legitimate, not feigned or collusive. The burden was on T.A.R. to prove that the matter was non-justiciable and it did not do so. Application of Goodwin, 1979 OK 106 § 4, 597 P.2d 762.

§ 30 In Goodwin we held that, in the absence of a showing of fraud or collusion, the appeal of a suit between parties who were in agreement concerning the issues was justiciable despite the fact that the appellee failed to file an answer brief. The trial court heard T.A.R.'s arguments and read the depositions of its members before ruling on T.A.R.'s motion to intervene. This fact and the Goodwin opinion demonstrate that the ***908** trial court's order denying Tal's motion to intervene did not deprive Oklahoma City's action of its justiciable character.

CONCLUSION

§ 31 T.A.R. was not entitled to intervene in Oklahoma City's declaratory judgment action because Oklahoma City was representing the rights of all its taxpayers and was entitled to the presumption that it would do so in good faith. T.A.R. failed to overcome this presumption. Further, T.A.R. made no claim and the record would not support that Oklahoma City's suit was collusive or fictitious. Thus, the trial court did not err in denying both T.A.R.'s motion to intervene and its motion for continuance.

JUDGMENT OF THE TRIAL COURT AFFIRMED

HARGRAVE, V.C.J., and HODGES, LAVENDER, OPALA, and KAUGER, JJ., concur.

SUMMERS, C.J., concurs in result.

END OF DOCUMENT

2. Oklahoma Supreme Court Opinion - *State ex rel Tal v. Norick*, 1999 OK 85, 991 P.2d 999 - Decided: October 26, 1999, Mandate Issued: November 30, 1999 (a/k/a/ *Tal II*).

Tal v. Norick

No. 93,273
991 P.2d 999, 1999 OK 85
Decided: October 26, 1999
Mandate Issued: November 30, 1999

SUPREME COURT OF THE STATE OF OKLAHOMA

The STATE of Oklahoma, ex rel., Moshe TAL, resident taxpayer of The City of Oklahoma City; and Taxpayers Against Ripoffs ("T.A.R."), an initial association of thirteen resident taxpayers of the City of Oklahoma City, Oklahoma,

Plaintiffs-Appellants,

v.

Ron NORICK, in his official capacity as former Mayor of the City of Oklahoma City and as the former Chairman of the Oklahoma City Public Works Authority; Kirk Humphreys, in his capacity as Mayor of the City of Oklahoma City, and as the Chairman of the Oklahoma City Public Property Authority; Mark Schwartz, Frosty Peak, Jack Cornett, Frances Lowrey, Jerry W. Foshee, Ann Simank, Willa Johnson and Guy Liebman, in their official capacities as the City council of The City of Oklahoma City, Oklahoma, and as the Board of Trustees of the Oklahoma City Public Works Authority; The City of Oklahoma City, Oklahoma, a municipal corporation; the Oklahoma City Public Property Authority, a public trust, with The City of Oklahoma City, Oklahoma, as its sole beneficiary; The Oklahoma City Athletic Club, Inc., an Oklahoma corporation, general partner of the Oklahoma City Athletic Club limited partnership; and John Does No. 1-20,

Defendants-Appellees.

No. 93,273.

Oct. 26, 1999.

Taxpayers brought qui tam action alleging that transaction in which city leased baseball stadium it had built to minor league baseball team was invalid, because of inadequate consideration, and seeking money damages. The District Court, Oklahoma County, Niles Jackson, J., dismissed petition as premature. Taxpayers appealed. After granting motion seeking to have it retain appeal, the Supreme Court, Watt, J., held that qui tam action was premature, as action was pending in which city and its public property authority sought declaratory judgment that transaction was valid, or in the alternative return of property.

Affirmed.

Summers, C.J., concurred in the result.

West Headnotes

[1] **Abatement and Revival** ⇦**4**

2k4 Most Cited Cases

A defendant may by motion interpose the pendency of other litigation as an impediment to going forward with the action then sought to be prosecuted. 12 Okl.St.Ann. § 2012, subd. B, par. 8.

[2] **Abatement and Revival** ⇦**5**

2k5 Most Cited Cases

Qui tam action in which taxpayers alleged that transaction in which city leased baseball stadium to minor league baseball team was invalid because of inadequate consideration, and sought money damages, was premature, where action in which city and its public property authority sought declaratory judgment that transaction was valid, or in the alternative return

of property, was pending; city was representing rights of all taxpayers in declaratory judgment action, and was entitled to presumption that it would do so in good faith.

***999** Appeal from the District Court of Oklahoma County, Oklahoma; Honorable Niles Jackson District Judge.

§ 0 The trial court dismissed the second amended petition of Appellants Moshe Tal, et al., who denominate themselves as "an association known as Taxpayers Against Ripoffs ('T.A.R.')" and who sued on relation of the State of Oklahoma in a *qui tam* action. We hold that the trial court correctly dismissed Appellants' second amended petition.

TRIAL COURT'S ORDER OF DISMISSAL AFFIRMED

Bryce S. Kennedy, Jr., Kennedy & Associates, Enid, Oklahoma, for Appellants.

William O. West, Municipal Counselor, and Daniel T. Brummitt, Land Use Division Head, Richard C. Smith, Litigation Division Head, Attorneys for The City of Oklahoma City, and Diane Lewis, Deputy Municipal ***1000** Counselor, City of Oklahoma City, for Appellee, Oklahoma City Public Property Authority.

Melvin R. McVay, Jr., Heather L. Hintz, Phillips, McFall McCaffrey, McVay & Murrah, Oklahoma City, Oklahoma, for Appellee, Oklahoma City Athletic Club.

OPINION

WATT, Justice,

§ 1 Appellants, Tal and the association calling itself "T.A.R.," dismissed most of the defendants named in the style of this appeal. The only remaining defendants, appellees here, are the former Mayor of Oklahoma City, Ron Norick, in his official capacity, The City of Oklahoma City, the Oklahoma City Public Property Authority, and the Oklahoma City Athletic Club. The trial court granted the motions to dismiss of the remaining defendants, the City and its former Mayor, the Public Property

Authority, and the Athletic Club. Tal and T.A.R. appeal. Appellees moved that this Court retain this appeal on July 19, 1999 and we granted the motion on August 9, 1999.

FACTS AND PROCEDURAL BACKGROUND

§ 2 In 1993 the people of The City of Oklahoma City approved a special purpose sales tax to be used to construct improvements under the Oklahoma City Metropolitan Area Projects program, known as MAPS. Among those improvements was the Bricktown Ballpark. In 1996 Oklahoma City contracted with Boldt Construction Co. to build the Bricktown Ballpark. Oklahoma City leased the Bricktown Ballpark to the Oklahoma City Public Property Authority in 1997, which then subleased it to the Oklahoma City Athletic Club Limited Partnership. Under the sublease, the Athletic Club was to operate the Bricktown Ballpark for a period of ten years to be followed by three automatic five year renewals. The Public Property Authority and the Athletic Club amended the sublease in 1998 so that the Athletic Club could operate the Bricktown Ballpark for the 1998 season as a home for its AAA Minor League baseball team, the RedHawks, because certain conditions precedent to the original sublease becoming effective had not been satisfied but the parties wanted the team to use the park during the 1998 season despite the failure to satisfy these conditions precedent.

§ 3 A group headed by Tal "submitted numerous proposals to the City, Authority and their Officers to develop Bricktown property ..." Plaintiffs' Second Amended Petition. These proposals were rejected in favor of proposals by competing bidders.

§ 4 On September 9, 1998, following the City Counsel's rejection of the Tal group's proposals, Tal and T.A.R. filed a written demand under 62 O.S.1991 §§ 372 and 373, the qui tam statutes, demanding that Oklahoma City and the Public Property Authority rescind its contracts concerning the Bricktown Ballpark. T.A.R. claimed that the entire Bricktown

Ballpark transaction was void because of inadequate consideration. Tal and T.A.R. filed a qui tam action against Oklahoma City and the Public Property Authority in which they claimed that the Ballpark transaction was invalid and claimed a right to money damages from the City.

§ 5 In response to Tal's and T.A.R.'s written demand Oklahoma City and the Public Property Authority brought a declaratory judgment action against the Athletic Club on October 16, 1998. They sought a judgment declaring that the Bricktown Ballpark transaction was valid or, in the alternative, sought the return of the property if the transaction were found not to be valid. The Athletic Club filed its answer on November 10, 1998 in which it also alleged that the transaction was valid. Tal and T.A.R. twice amended their petition after Oklahoma City and the Public Property Authority had filed their action against the Athletic Club.

[1] § 6 Oklahoma City and the Public Property Authority moved to dismiss Tal's and T.A.R.'s second amended petition because Oklahoma City and the Public Property Authority had filed suit for declaratory judgment against the Athletic Club in response to Tal's and T.A.R.'s written demand. Tal and T.A.R. resisted the motion to dismiss on the ground that Oklahoma City's and the ***1001** Public Property Authority's action against the Athletic Club did not present a justiciable controversy because all parties to that action agreed that the transaction was valid. Tal and T.A.R. argued that the declaratory judgment action did not, therefore, serve to satisfy their written demand. Tal and T.A.R. also argued that the City's, and the Public Property Authority's contention that the transaction was valid showed that the City and the Public Property Authority could not be relied upon to prosecute the matter fairly and that Tal and T.A.R. should, therefore, be allowed to do so in their qui tam action. The trial court dismissed Tal and T.A.R.'s action on the ground that the issues raised by Tal and T.A.R. were under consideration by the court in the City's and the Public Property Authority's declaratory judgment action. A

defendant may by motion interpose the pendency of other litigation as an impediment to going forward with the action then sought to be prosecuted. See 12 O.S.1991 § 2012(B)8; Burks v. American Nat. Bank of Tulsa, 89 Okl. 62, 213 P. 301 (1923).

ISSUE

§ 7 Did the trial court correctly dismiss Tal's and T.A.R.'s qui tam action as having been prematurely brought?

We answer the question "yes."

DISCUSSION

[2] § 8 We addressed and disposed of issues substantially similar to those presented here in an earlier appeal involving Tal and another Bricktown project, City of Oklahoma City v. Oklahoma City Urban Renewal Authority, 1999 OK 71, 988 P.2d 901 (reh. den. September 30, 1999), Tal I. In Tal I, Tal and T.A.R. filed a written demand against the City, claiming that certain development agreements, other than those at issue here, were unlawful. The City then filed a declaratory judgment action against the other parties to the agreement in response to Tal's and T.A.R.'s demand. Both the City and the other parties to the agreements agreed in Tal I that those agreements were lawful. Although Tal and T.A.R. sought to intervene in the City's action in Tal I and did not prosecute an independent qui tam action, as they have done here, the plaintiffs' theories in support of intervention in Tal I were substantially similar to those presented by plaintiffs here in support of their claimed right to prosecute a *qui tam* action.

§ 9 In Tal I we held:

> T.A.R. was not entitled to intervene in Oklahoma City's declaratory judgment action because Oklahoma City was representing the rights of all its taxpayers and was entitled to the presumption that it would do so in good faith. T.A.R. failed to overcome this presumption. Further, T.A.R. made no claim and the record would not support that Oklahoma

City's suit was collusive or fictitious.

Tal I, 1999 OK 71 at § 31. The arguments Tal and T.A.R. make here were fully discussed and disposed of in Tal I. The similarity between the record presented here and the record we considered in Tal I convinces us that there is no reason to restate here our reasoning in Tal I. We therefore hold that the trial court did not err in concluding that the qui tam action was prematurely brought.

TRIAL COURT'S ORDER OF DISMISSAL AFFIRMED

HARGRAVE, V.C.J., HODGES, LAVENDER, OPALA, and KAUGER, JJ.-- concur.

SUMMERS, C.J.--concurs in result.

END OF DOCUMENT

3. Order denying Intervention - *City of Oklahoma City v. Urban Renewal Authority, et al*, District Court of Oklahoma County, Oklahoma - CJ-99-487-67, Dated 3/12/99.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

THE CITY OF OKLAHOMA CITY, a municipal corporation,	)
Plaintiff,	)
vs.	)Case No. CJ-99-487-67
THE OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; BRICKTOWN PARKING INVESTORS, L.L.C., an Oklahoma limited liability company; and, BRICKTOWN TMK/HOGAN ENTERTAINMENT, L.L.C., an Oklahoma limited Liability Company,	)
Defendants.	)

ORDER

NOW on this 1st day of March, 1999, the Motion to Intervene (with attached qui tam petition under 62 O.S. 373) and Motion for Continuance (of the trial of this action for declaratory judgment and counterclaims for preliminary and permanent injunctive relief) of Moshe Tal, Lisa (Michelle) Bowers, Dr. John Migliaccio, Steve Migliaccio, Joy Parker, Physilla (Jo) Polley, Edna (Ennise) Richardson, Morning-Star Takapu, and Michael (Lawrence) Toms, came on for hearing before the

undersigned Judge. Movants were present by and through their counsel Bryce S. Kennedy; Plaintiff, The City of Oklahoma City, was present by and through its counsel Daniel T. Brummitt; Defendant, The Oklahoma City Urban Renewal Authority, was present by and through its counsel Dan Batchelor and Janis S. Powers, of the law firm of Batchelor & Powers, P.C.; and Defendants, Bricktown Parking Investors, L.L.C., and Bricktown TMK/Hogan Entertainment, L.L.C., were present by and through their counsel Melvin R. McVay, Jr., Robert N. Sheets, and Ellen K. Spiropoulos of the law of Phillips McFall McCaffrey McVay & Murrah, P.C. The Court having reviewed the Motion and having heard the arguments of counsel, find that the Motion should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion to Intervene and Motion for Continuance are hereby DENIED.

DATED this 12 day of March, 1999.

S/ Judge Karl Gray

JUDGE OF THE DISTRICT COURT

[5 PAGES OF PARTIES SIGNATURES OMITTED]

III. RULE 14 1(h)(i)(iii): Order Denying Rehearing:

Order, *State of Oklahoma v. City of Oklahoma City*, Oklahoma Supreme Court Appeal - Case No. 94,874 (*Tal III*) dated 2/5/01.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, ex rel., Moshe Tal, resident taxpayer of The City of Oklahoma City; and Taxpayers Against Ripoffs ("T.A.R."), an association of more than ten resident taxpayers of the City of Oklahoma City, Oklahoma,	)	
Plaintiffs/Appellees,	)	
v.	)	No. 94,874
THE CITY OF OKLAHOMA CITY, OKLAHOMA, a municipal corporation; RONALD J. NORICK, in his personal and official capacity as the former Mayor of the City; KIRK D. HUMPHREYS, in his personal and official capacity as the Mayor of the City; JAMES E. THOMPSON, in his personal and official capacity as Assistant City Manager & former MAPS Director; WILLIAM O. WEST, in his personal and official capacity as City"s" Assistant Municipal Counselor; DANIEL T. BRUMMITT, In his personal and official capacity as City"s Assistant Municipal Counselor; THE OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; TIANA P. DOUGLAS, in her personal and official capacity as the	)	

Executive Director of Urban Renewal;)
STANTON L. YOUNG, FRED JONES HALL,)
J. LARRY NICHOLS, WARREN)
GARDNER, and JAMES TOLBERT III, in his)
personal and official capacities as)
Commissioners of the Urban Renewal;)
WILLIAM (BILL) JOHNSTONE, in his)
personal and official capacity as the former)
Commissioner of Urban Renewal; DAN)
BATCHELOR, in his Personal and official)
capacity as legal counselor of Urban)
Renewal; BRICKTOWN INVESTORS, L.L.C.,)
an Oklahoma limited liability company;)
BRICKTOWN-TMK/HOGAN PARKING,)
L.L.C., an Oklahoma limited liability)
company; OKC ATHLETIC CLUB LIMITED)
PARTNERSHIP; BAP-BRICKTOWN, L.L.C.,)
an Oklahoma limited liability company;)
TMK/HOGAN ENTERTAINMENT, L.L.C., an)
Oklahoma limited liability company;)
TORCHMARK CORPORATION,(TMK), an)
Alabama corporation; TORCHMARK)
DEVELOPMENT CORPORATION, and TMK)
INCOME PROPERTIES, both subsidiaries of)
TMK; DAN RANDOLPH (RANDY) HOGAN;)
EDWARDS THEATRES CIRCUIT, INC., a)
California corporation; OKLAHOMA GAS &)
ELECTRIC COMPANY (OG&E), an)
Oklahoma corporation; THE BENHAM)
GROUP, an Oklahoma corporation; and)
JOHN DOES 1-50.)
)
Defendants/Appellees.)

ORDER

The Plaintiffs/Appellants' Petition for Rehearing, filed October 16, 2000, asking this Court to reconsider and modify

language used in is decision, *State ex rel, Moshe Tal v. The City of Oklahoma City*, 2000 OK 70, is denied.

Three groups of the Defendants/Appellees have filed motions for appeal-related attorney fees. On October 16, 2000, The City of Oklahoma City, Oklahoma, Ronald J. Norick, Kirk D. Humphreys, James E. Thompson, William O. West, and Daniel T. Brummitt filed their motion alleging that the subject action and appeal by the plaintiffs were brought in bad faith, and they were entitled to recover the reasonable costs of the defense of the action including attorney fees. On October 16, 2000, OKC Athletic Club Limited Partnership, Bricktown TMK/Hogan Entertainment, L.L.C., Bricktown Parking Investors, L.L.C., TMK/Hogan, Hogan Properties and Dan Randolph Hogan, filed their motion alleging that appellants' appeal was frivolous and asked for appeal-related attorney fees and costs. On October 17, 2000, Oklahoma City Urban Renewal Authority and Related Parties filed their motion for appeal-related attorney fees as sanctions against the plaintiffs for filing and prosecuting an appeal that is non-meritorious, frivolous, or a violation of Court rules. The Plaintiffs/Appellants responded with two separate briefs, both filed October 31, 2000, which deny the Defendants/Appellees are entitled to an award of attorney fees or sanctions. The motions of Defendants/Appellees for appeal- related attorney fees are denied.

S/Chief Justice

Chief Justice

ALL JUSTICES CONCUR.

IV. RULE 14 1(h)(i)(v): Relevant Law

1. Oklahoma Qui Tam statutes 62 Okla.Stat. §§ 372-373

62 Okla.Stat. § 372:

Every officer of the state and of any county, township, city, town or school district, who shall hereafter order or direct the payment of any money or transfer of any property belonging to the state or to such county, city, town or school district, in settlement of any claim known to such officers to be fraudulent or void, or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made or attempted to be made, for the state or any such county, city, town or school district, by any officer thereof, and every person, having notice of the facts, with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money shall be paid or such transfer of property shall be made, shall be jointly and severally liable in damage to all innocent persons in any manner injured thereby, and shall be furthermore jointly and severally liable to the state, county, city, town or school district affected, for triple the amount of all such sums of money so paid, and triple the value of property so transferred, as a penalty, to be recovered at the suit of the proper officers of the state or such county, city, town or school district, or of any resident taxpayer thereof, as hereinafter provided. 62 Okla.Stat. § 372.

62 Okla.Stat. § 373:

Upon the refusal, failure, or neglect of the proper officers of the state or of any county, township, city, town, or school district, after written demand signed, verified and served upon them by ten resident taxpayers of the state or such county, township, city, town, or school district, to institute or diligently prosecute proper proceedings at law or in equity for the recovery of any money or property belonging to the state, or such county, township, city, town, or school district, paid out or transferred by any officer thereof in pursuance of any unauthorized, unlawful, fraudulent, or void contract made, or

attempted to be made, by any of its officers for the state or any such county, township, city, town, or school district, or for the penalty provided in the preceding section, any resident taxpayer of the state or such county, township, city, town, or school district affected by such payment or transfer after serving the notice aforesaid and after giving security for cost, may in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action which the proper officers of the State, county, township, city, town, or school district might institute and maintain for the recovery of such property, or for said penalty; and such municipality shall in such event be made defendant, and one-half (½) the amount of money and one-half (½) the value of the property recovered in any action maintained at the expense of a resident taxpayer under this section, shall be paid to such resident taxpayer as a reward. 62 Okla.Stat. § 373.

2. Oklahoma Intervention statute 12 Okla.Stat. § 2024

Title 12 Okla.Stat. § 2024.
§§ 2024 . Intervention.

A. INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action:

1. When a statute confers an unconditional right to intervene; or

2. When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest.

B. PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action:

1. When a statute confers a conditional right to intervene; or

2. When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C. PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 5 of this act. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, the plaintiff or defendant, or both, may respond to the pleading of the intervenor within twenty (20) days after the date that the motion was granted unless the court prescribes a shorter time.

D. INTERVENTION BY STATE OF OKLAHOMA. In any action, suit, or proceeding to which the State of Oklahoma or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of Oklahoma affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General of Oklahoma, and shall permit the State of Oklahoma to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State of Oklahoma shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

3. Federal Rules for Intervention - FRCP-Rule 24

Rule 24 - Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney

General of the United States as provided in Title 28, U.S.C. § 2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

V. RULE 14 1(h)(i)(vi): Other Material Essential to Understand the Petition:

1. Taxpayers 3/1/99 Motion to Intervene:

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE CITY OF OKLAHOMA CITY, a municipal corporation,	)
Plaintiff,	)
vs.	)Case No. CJ-99-487-67
THE OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; BRICKTOWN PARKING INVESTORS, L.L.C., An Oklahoma Limited Liability Company; and, BRICKTOWN TMK/HOGAN ENTERTAINMENT, L.L.C., an Oklahoma Limited Liability Company,	)
Defendants.	)

MOTION TO INTERVENE AND MOTION FOR CONTINUANCE

Comes Now, Moshe Tal, Lisa (Michelle) Bowers, Dr. John Migliaccio, Steve Migliaccio, Joy Parker, Physilla (Jo) Polley, Edna (Ennise) Richardson, Morning-Star Takapu, and Michael (Lawrence) Toms, hereinafter referred to as Intervenors, pursuant to 12 O.S. Section 2024A and move for leave to intervene as a matter of right, or in the alternative, pursuant to 12 O.S. 2024B, permissive intervention, as additional defendants in this action, and show the court:

1. The Interveners are residents and taxpayers of the City of Oklahoma City, Oklahoma, and in addition have paid a special purpose sales tax over the past several years, specifically, Ordinance No. 20,045 (hereinafter "MAPS Ordinance"), the proceeds of which have been used to acquire land and construct public improvements in Bricktown.

2. The Plaintiff, the City of Oklahoma City (the "City"), is a charter city organized and existing under the laws of the State of Oklahoma.

3. The Defendants, the Oklahoma City Urban Renewal Authority (the "Authority") is a body corporate, created pursuant to 11 Okla. Stat. 1991, Section 38-101 et seq.

4. On June 24, 1997, the City approved an amended Urban Renewal Plan entitled "The MAPS Sport-Entertainment-Parking Support Redevelopment Plan" (hereinafter "Redevelopment Plan") for an area located in downtown Oklahoma City (hereinafter the "Plan Area").

5. On January 22 1998, the City conveyed certain real property acquired by the City for MAPS purposes (hereinafter the MAPS Property") within the Plan Area to the Authority for implementation of the Redevelopment Plan.

6. On December 19, 1997, the Authority and defendant, Bricktown Parking Investors, L.L.C. (Hereinafter "Bricktown Parking") entered into a Parking Redevelopment Agreement (hereinafter "Parking Agreement") for the generation and creation of parking facilities to be located on those parcels of real property located south of Reno Avenue, including the MAPS Property, and more particularly described in the Parking Agreement (hereinafter "Parking Facilities").

7. On February 4, 1998, the Authority and Bricktown

Parking entered into a Ground Lease (hereinafter the "Ground Lease") for the exclusive use and operation of the Parking Facilities for an initial term commencing on February 4, 1998, and capable of extending for the next thirty (30) years.

8. On July 21, 1998, the Authority and Bricktown TMK/Hogan Entertainment, L.L.C. (Hereinafter "Bricktown Entertainment") entered into a Redevelopment Agreement (hereinafter "Redevelopment Agreement") for the development of certain real property within the Plan Area, including the MAPS Property, to be used as entertainment facilities (hereinafter "Entertainment Facilities").

9. On January 12, 1999, the Intervenors prepared and served a "Written Demand" to the City Clerk, City Manager, Mayor and City Council of the City alleging that the Parking Agreement, the Ground Lease and the Redevelopment Agreement (hereinafter the "Agreements") constitute a transfer of property by the City and/or the Authority pursuant to an unlawful contract(s); i.e. the Agreements, in violation of state law and demanding that the City Council direct the Municipal Counselor to file a lawsuit in the name of the City to declare the Agreements void and unlawful and to recover the MAPS Property and any amounts owed to The City, by the Authority, Bricktown Parking and/or Bricktown Entertainment, attached hereto as Exhibit "A". The Authority was later served with the Written Demand.

10. On January 26, 1999, the City filed this Petition for Declaratory Judgement against the named Defendants asking this Honorable Court to confirm the validity of the Agreements, or in the alternative, declare that this Honorable Court declare the Agreements as not valid as a wrongful transfer of the MAPS Property and therefore are null and void and permit the City to recover an and

all MAPS Property and other monies wrongfully transferred.

11. On February 22 and 23, 1999, one of the defendants herein, commenced the depositions of the Intervenors, pursuant to subpoena duly served. Moshe Tal, one of the Intervenors was present for all the depositions, and the Intervenors legal counsel was present on February 22, 1999. At no time did the Plaintiff or Defendants inform Moshe Tal or his counsel of that this case was set for trial on March 1 and 2, 1999, nor did legal counsel for the Intervenors receive any correspondence or telephone calls regarding same, although the rules of Professional Ethics and common courtesy may dictate the provision of such notice.

12. Moshe Tal, the Intevenor who helped prepare the Written Demand and has prepared most of the research and compiled the documentation with regard to the subject of this matter, scheduled for many weeks a trip tp and is currently in Puerto Rico, beginning on February 26, 1999, and through March 5, 1999. Moshe Tal is the Intervenors main witness in this case and it is expected that none of the other Intervenors will testify in this matter.

13. Article 10 Section 14 and Article 10 Section 17 of the Oklahoma Constitution require that public money must be spent for public purposes and that a city or an authority can not give a gift or lend their credit to any person, firm or corporation. Among other allegations, the Written Demand alleges that the City/Authority, in entering into the Agreements violated these constitutional provisions by: (1) providing Bricktown Parking with 20 acres of prime parking for theoretically price of one annual parking space; (2) by selling prime property to Bricktown Entertainment for significantly less that its purchase price; (3) by requiring little additional consideration, accountability and safeguards

to otherwise protect the interests of the taxpayers. The Intervenors represent all taxpayers with similar interests and points of view and without the participation of Intervenors in this proceeding, the interests of the public will not be heard nor their arguments made. In essence, Intervenors Motion to Intervene should be granted since:

a. The Intervenors have an interest relating to the alleged Wrongful Transfer, the subject of this action;

b. Without Intervention the disposition of this action, as a practical matter, impairs, impedes and may eliminate the Interveners' protection of the public interests;

c. The Interveners interest is not represented by other parties since they are signatories of the Agreements.

If the Interveners are denied a judicial hearing, then these Interveners, as well as thousands of like-minded residents of the City of Oklahoma City will be denied a meaningful opportunity to be heard. The parties to this action want to stop our right to talk; and that right is as fundamental as our democracy.

14. Interveners would request a continuance to permit the Interveners to properly prepare and defend the rights of the taxpayers of the City of Oklahoma City.

15. A Brief of Authorities in Support of this Motion is filed herein concurrently.

16. A Petition is attached as Exhibit "B" to this Motion setting out the claims for which intervention is sought.

Dated this 1st day of March, 1999.

Respectfully Submitted,

s/Bryce Kennedy

Bryce S. Kennedy OBA #4959

Kennedy & Associates
1 Grand Center
Mezzanine Suite
Enid, Oklahoma 73701
Voice: (580) 233-9707

[CERTIFICATE OF HAND DELIVERY OMITTED]

2. Exhibit "C" to Taxpayers' 4/5/99 Petition In Error - Oklahoma Supreme Court - Appeal Case No. 92874, Opinion: *City of Oklahoma City v. Urban Renewal Authority, et al*, 1999 OK 71, 988 P.2d 901.

EXHIBIT "C"

ISSUES AND ERROR PROPOSED TO BE RAISED ON APPEAL

The trial court should have granted Interveners/Appellants a continuance and permitted intervention in the declaratory judgement litigation for the following reasons:

1. Failure to grant a short continuance due to the short notice and unavailability of the main resident taxpayer and witness, and to permit intervention, constituted an abuse of discretion, was unreasonable and deprived the interveners of due process.

2. Without the Interveners participation in the declaratory judgment case, the "opposing interests" requirement is not present, since the parties are in full agreement and/or there is no actual, existing justiciable controversy between the parties.

3. The appellants have an interest in the subject matter of the litigation, including but not limited to the following reasons: to prevent collateral attacks, consent judgements, res judicata, collateral estoppel and other issue preclusion defenses both to the petition attached to the Motion to Intervene and other accrued causes of actions of appellant(s).

4. The appellants have a right to intervene, and should have been permitted to intervene, as authorized by 12 O.S. Section 2024(A)(2).

5. The Illegal Agreements constitute a wrongful transfer of property and payment of money pursuant to an illegal

contract(s) in violation of Article 10 Section 14 and 17 of the Oklahoma Constitution, and thereby fail to provide adequate consideration, safeguard and accountability as required pursuant to the landmark cases of Burkhardt v. The City of Enid, 771 P.2d 608, and the State of Oklahoma ex rel. William Daniel Brown, et al. The City of Warr Acres, et al., 1997 OK 117.

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3. Excerpts from Trial Transcript -held March 1, 1999, District Court of Oklahoma County, Oklahoma - *City of Oklahoma City v. Urban Renewal Authority, et al*, Case No. CJ-99-487.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

THE CITY OF OKLAHOMA CITY, a municipal corporation,	)
Plaintiff,	)
vs.	)Case No. CJ-99-487
THE OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; BRICKTOWN PARKING INVESTORS, L.L.C., An Oklahoma Limited Liability Company; and, BRICKTOWN TMK/HOGAN ENTERTAINMENT, L.L.C., an Oklahoma Limited Liability Company,	)
Defendants.	)

TRANSCRIPT OF BENCH TRIAL

HAD ON THE 1ST DAY OF MARCH, 1999

BEFORE THE HONORABLE KARL GRAY DISTRICT JUDGE
IN AND FOR OKLAHOMA COUNTY OKLAHOMA

REPORTED BY:

Marla Hill, CSR, RPR
Official Court Reporter
Oklahoma County Courthouse
Oklahoma City, Oklahoma 73102

000532

* * *

Excerpt from page 31, lines 18-36 (Interveners' attorney, Bryce Kennedy, arguing Taxpayers right to intervene):

> " ... I have – I set out in my motion what I think the standard is for a motion to intervene. The interveners have an interest relating to the alleged wrongful transfer of the subject disaction[sic]. And we do, as do all the residents of Oklahoma City. Without intervention the disposition of this action is a practical matter and impairs and impeded and may eliminate the interveners' protection of the public interest. " In Brackets Added.
>
> *Id.*, 3/1/99 Trial Transcript, p. 31.

* * *

Insert from page 70, lines 1-6 (Court overrules Taxpayers' Motion to Intervene and Motion for Continuance):

> "THE COURT: Anything else"
>
> MR BRUMMITT [CITY'S COUNSEL]: No, your Honor.
>
> THE COURT: Overruled. Exception.
>
> (Mr. Kennedy exited the courtroom.)
>
> THE COURT: I need to take another recess. Five minutes." In Brackets Added.
>
> *Id.*, 3/1/99 Trial Transcript, p. 70.

END OF APPENDIX

Dated: May 7, 2001

MaryGaye LeBoeuf
6704 Parkwood Lane
Oklahoma City, Oklahoma 73132
Telephone: (405)728-9925
Counsel for Petitioners